

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL ARCHULETA,

Plaintiff,

v.

KERN VALLEY STATE PRISON,

Defendant.

No. 1:20-cv-01033-NONE-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN PART, DENYING
MOTION TO PROCEED IN FORMA
PAUPERIS, DISMISSING COMPLAINT, AND
GRANTING LEAVE TO AMEND

(Doc. Nos. 2, 7)

Thirty Day Deadline

Plaintiff Samuel Archuleta is a state prisoner proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 31, 2020, the assigned magistrate judge filed findings and recommendations, recommending that plaintiff's motion to proceed *in forma pauperis* (Doc. No. 2) be denied because he has accrued three prior "strike" dismissals under 28 U.S.C. § 1915(g) and the allegations in his complaint fail to show that he is in imminent danger of serious physical injury. (Doc. No. 7.) The magistrate judge provided plaintiff fourteen (14) days to file objections to the findings and recommendations. (*Id.* at 2.) Plaintiff has not filed any objections and the time to do so has passed.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
 2 *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings
 3 and recommendations are supported by the record and proper analysis insofar as the magistrate
 4 judge recommends denial of plaintiff's motion to proceed *in forma pauperis* and dismissal of the
 5 operative complaint. However, viewing the complaint in the light most favorable to this pro se
 6 plaintiff, the court believes it is appropriate to afford plaintiff one more opportunity to amend his
 7 complaint. In his complaint, plaintiff alleges that he suffers from Guillain–Barré syndrome and
 8 that as a result he is at heightened risk of becoming severely ill were he to contract COVID-19.
 9 (Doc. No. 1 at 3.) He also alleges that he has asked to “self-quarantine” until he can “get [a]
 10 transfer out of here,” but has not received any response to his request. (*Id.*) The court agrees that,
 11 as presently pled, plaintiff's claim lacks sufficient detail to demonstrate that he is facing imminent
 12 danger of serious physical injury. However, in an abundance of caution, the court will permit
 13 plaintiff an opportunity to either pay the filing fee in full or amend his complaint to attempt to
 14 explain why, given his present circumstances and medical condition, he satisfies the imminent
 15 danger exception to the three strikes rule under § 1915(g).

16 Accordingly,

- 17 1. The findings and recommendations issued on July 31, 2020 (Doc. No. 7) are adopted
 18 in part:
 - 19 a. Plaintiff's complaint (Doc. No. 1) is DISMISSED; and
 - 20 b. Plaintiff's motion to proceed *in forma pauperis* (Doc. No. 2) is DENIED
- 21 2. Within thirty (30) days of the date of this order, plaintiff must either:
 - 22 a. Pay the filing fee in full; or

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b. File an amended complaint in an attempt to satisfy the imminent danger exception.

Plaintiff is warned that if he fails to elect either option within thirty days, his case may be dismissed without further notice.

IT IS SO ORDERED.

Dated: September 2, 2020


UNITED STATES DISTRICT JUDGE